IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2713 OF 1994

Brahman Sahayak Sangh, a Public Trust, duly registered under the provisions of the Bombay Public Trusts Act, 1950 bearing PTR No.F-139 (Bombay) as also under the Societies Registration Act bearing Registration No.937 of 1938-39 through its Trustee, Secretary and authorised representative Shri V.V. Patwardhan. .... Petitioners

- Versus -

1. The State of Maharashtra through its Secretary to the Ministry of Revenue and Forest, Mantralaya, Bombay-400 032.

2. The Commissioner, Konkan Division, Bombay.

3. The Collector, Bombay.

4. The Special Land Acquisition Officer, MHADA, Bombay.

5. The Secretary to the Ministry of Food and Civil Supplies, Mantralaya, Bombay.

6. The Controller of Rationing, having his office at 5th Floor, Royal Insurance Building, Sir Jamshedji Tata Road, Bombay. .... Respondents

Shri G.S. Godbole for the Petitioners.

Ms Geeta Shastri, Asst. Government Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: SEPTEMBER 26, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. The petitioners challenge the acquisition proceedings on the ground of non-compliance of Section 5A of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" in as much as that neither the petitioners were given personal hearing in spite of objections being filed to the Notification under Section 4, nor the objections which were available for consideration prior to submission of the report were considered while making report on Section 5A inquiry. Reliance is sought to be placed in the decisions in the matter of **Shri Mandir Sita Ramji v. Governor of Delhi,** reported in AIR 1974 SC 1868, **Farid Ahmed Abdul Samad and another v. The Municipal Corporation of the City of Ahmedabad and another,** reported in AIR 1976 SC 2095, **Khushalrao Tulshiramji Pandao and others v. State of Maharashtra and others,** reported in 2001 (4) Mh.L.J. 510, **Vinayak Gopal Limaye v. Laxman Kashinath Athavale,** reported in Vol.58 1956 Bombay Law Reporter 592 and **Tej Kaur and others v. State of Punjab and others,** reported in AIR 2003 SC 2414 as well as **Francisco Ferreira Martins and others v. Union of India and others,** reported in AIR 1985 Bombay 312. The proceedings are sought to be justified on the ground that the objections

were filed beyond the period of limitation and there was no obligation on the part of the authorities to consider the objections which were filed beyond the period of limitation.

2. Few facts relevant for the decision are that, Notification under Section 4 was issued on 24-12-1992 and a personal Notice regarding the proposed requisition was served upon the petitioners on 6-1-1993. The petitioners by letter dated 18-1-1993 asked for certain time to file their say on the ground that on account of riots, they were not able to file the objection within time. The time was sought to be extended further by another letter dated 28-2-1993 and thereafter objections were filed under the letter dated 30-3-1993. The declaration under Section 6 was issued on 24-12-1993. Thereafter the Notice under Section 9(3) was issued on 28-3-1994. Same was replied by the petitioners without claiming any compensation but informing about the breach of the provisions comprised under Section 5A of the said Act by the concerned authorities. Thereafter the present petition came to be filed and as there was stay granted to the proceedings, no award has been passed in the matter.

3. As regards the contention about failure on the part of the authorities to give opportunity to the petitioners of being heard in the matter pursuant to the

objections filed to the Notification under Section 4 and before conclusion of the Section 5A inquiry, it is an undisputed fact that the Notification under Section 4 was issued on 24-12-1992 and thereafter a personal Notice dated 28-12-1992 was served upon the petitioners on 6-1-1993. The Section 5A clearly provides that a person interested in the land sought to be acquired has to file the objections, if any, within 30 days from the date of publication of the Notification. Obviously, therefore, in terms of the statutory provisions, the petitioners ought to have filed their objections on or before 22-1-1993. Assuming that the personal Notice served on 6-1-1993 has to considered as the date of commencement of the period of limitation of 30 days, the petitioners in that case were required to file their objections on or before 5-2-1993. It is an admitted fact that no such objections were filed either within the period prescribed by the statutory provisions for filing of the objections by the concerned parties before the concerned authorities or on or before 5-2-1993. In the absence of the applicability of the provisions of the Limitation Act, 1963 to such proceedings, there is no power vested in the authorities to extend the period of limitation. Even assuming that the authorities in such cases by sheer ignorance of the provisions of law or for any other reason whatsoever extend the period of limitation and allows the parties to file the objections beyond the period prescribed under the statutory

provisions comprised under Section 5A, then it may not forbid the concerned authorities from taking into consideration such objections, however, that cannot create any right in favour of such parties nor an obligation upon the concerned authorities to hear the persons filing such objections beyond the statutory period of limitation prescribed under Section 5A. Being so, assuming that the request of the petitioners for extension of the time was acceded to by the concerned authorities and further time was granted to file the objections, then those objections could have been considered by the authorities if they had found those objections worth considering, but that cannot create a right in favour of the petitioners to contend that the petitioners were entitled to be heard as a matter of right in an inquiry under Section 5A. None of the decisions sought to be relied upon discloses any law having been laid down contrary to the view that we are taking in the matter. Certainly an inquiry under Section 5A without hearing the objectors, in case where the objections are filed within the period of limitation, would be bad in law and would vitiate the proceedings. However, when the objections are filed beyond the period of limitation prescribed under the statute, there is no obligation upon the authorities to grant personal hearing to such objectors.

4. As regards the second contention that even though

the objections were filed beyond the period of limitation, it was necessary for the authorities to consider the same before submitting the report, even without giving personal hearing to the parties, it is to be seen that in such cases it would be entirely in the discretion of the concerned authorities to consider such objections. Only in a case when the objections are relevant to decide the issue as to whether the acquisition is for the public purpose or not, certainly the authorities would be empowered to consider such objections in their discretion but not as an obligation. Assuming that there is any lapse on the part of the authorities in considering such objections, that cannot create any right in favour of the party, whose objections filed beyond the period of limitation are not considered, to seek a writ of mandamus directing the authorities to consider his objection. In order to seek such a direction, the party seeking such a relief must have right in his favour and there must be failure on the part of the authorities in performance of their obligation. As already seen above, there is no obligation cast upon the authorities to consider such objections once they are found to have been filed beyond the period of limitation.

5. The expression "after making such further inquiry" which are to be found in sub-section (2) of Section 5A following the expression "after hearing all such

objections" relates to the relevant issues which are to be raised in the objections which are filed within the period of limitation and not to the objections which are filed beyond the period of limitation, as rightly sought to be contended by the learned Advocate for the respondents.

6. It is also sought to be argued on behalf of the petitioners that the proposed acquisition is not for public purpose and in that regard attention is drawn to the grounds (f) and (l) of para 27 of the writ petition. The ground (f) relates to the contention of the petitioners that a huge area of about 3400 sq.ft. is actually occupied by the Government and that the same is utilised by 15 employees as per the information received by the petitioners. It is also the contention of the petitioners that in the vicinity of the premises there is yet another huge building occupied by the rationing office and the office which occupies the petitioners' building can easily be shifted to the said another premises. As regards the ground (l), it relates to the allegation that it was the duty of the Land Acquisition Officer to consider that the area which is not being utilised by the rationing department but being allegedly unauthorisedly sublet or allowed to be occupied by the co-operative credit society of the employees of the rationing department, but failed to consider the same. Admittedly, both these contentions were neither raised

in the objections filed even after the period of limitation by the petitioners nor any of those allegations were made in those objections. Undisputedly, these objections relate to the questions of fact which are to be considered on the basis of the materials to be placed before the authorities in the Section 5A inquiry. Once it is apparent that no such objections were raised, nor any material was made available before the concerned authorities in support of the alleged allegations, it is too late for the petitioners to raise these grounds in the writ petition to challenge the acquisition proceedings. Besides, as regards the necessity of the premises for the purpose for which the premises are sought to be acquired, it is entirely within the domain of the concerned authorities, based on the data which is collected, to ascertain the necessity of such premises and the Court in writ petition cannot sit in appeal over the decision of the concerned authorities regarding the necessity of the premises for a particular purpose.

7. In **Shri Mandir Sita Ramji's** case (supra), the interested party had filed objections contending that the property sought to be acquired belonged of a charitable institution and, therefore, was exempt from acquisition and the Collector inspite of the fact that the said objection was filed within the period of limitation prescribed under the statute, did not bother

to inquire into the matter. In that regard while considering that the objection raised involved a mixed question of law and facts, it was held that it was necessary for the Collector to inquire into the objection after giving the objector an opportunity of being heard and failure in that regard would amount to declining to exercise his jurisdiction under the Act. It was also held that merely because ultimately the Government may reject the report of the Collector, that will not absolve the Collector from performing his statutory duty to inquire into the objections and to make necessary recommendation.

8. In **Farid Ahmed Abdul Samad's** case (supra), pursuant to the Notification issued under Section 4, objections were submitted by the appellants with a request for personal hearing with regard to their objections which was denied to them. It was held that the heart of Section 5A of the said Act is the hearing of objections and under sub-section (2) thereof a personal hearing is mandatory irrespective of the fact whether such personal hearing is demanded or not. The decision is not on the point as to whether such personal hearing is to be given even to those who have not filed the objections in time or who have filed their objections after the expiry of the period of limitation.

9. The decision in **Vinayak Gopal Limaye's** case (supra)

is thoroughly out of place and has no application whatsoever to the case in hand. It was a decision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

10. The decision in **Tej Kaur's** case (supra) rather than assisting the petitioners, justifies the dismissal of the petition. Therein while rejecting the contention of the objector that the land acquisition proceedings were bad as no personal hearing was granted to the objector, it was held that though no personal hearing was granted, the objections raised by the party were considered and partly allowed by the Collector and thereafter the land acquisition proceedings proceeded further and even the award was passed. It was only after the passing of the award that the party sought to challenge the proceedings which clearly indicated that the party did not have genuine grievance in the matter and therefore there was no case for interference in the land acquisition proceedings.

11. As already observed above, the petitioners in the case in hand though have sought to raise certain contentions in the petition against the acquisition proceedings, admittedly, none of those objections were sought to be raised before the Collector in answer to the Notification under Section 4. Obviously there was no genuine grievance against the acquisition proceedings

raised before the Land Acquisition Officer even in the objections which were filed by the petitioners beyond the period of limitation.

12. The Division Bench of this Court in **Khushalrao Tulshiramji Pandao's** case (supra) had held that Section 5A clearly indicates that it is obligatory for the Collector or the Land Acquisition Officer to give the objector an opportunity of being heard and it is only after hearing of such objections and after making such further inquiry, if any, as he thinks necessary, that he can make a report and unless the persons interested in the land which have been notified under Section 4(1) have been given an opportunity of being heard, the authority concerned cannot proceed further. It was further held that when a procedure is prescribed by the Legislature, it is not for the Court to substitute a different one according to its notion of justice. In the said case also it was not in dispute that the interested persons had filed objections within the period of limitation prescribed under the statute.

13. None of these decisions are on the point in issue for consideration in the matter in hand and therefore are of no help to the petitioners.

14. For the reasons stated above, therefore, we do not find any substance in the grievance of the petitioners.

The petition, therefore, is dismissed. The rule is discharged. Interim relief stands vacated. No order as to costs.

15. At this stage, the learned Advocate for the petitioners prays for continuation of the interim stay for a period of 12 weeks. The same is objected to. However, we are inclined to grant the prayer and accordingly the stay granted to the acquisition proceedings shall continue for a period of 12 weeks.

16. Certified copy expedited.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**